

1 BARRY J. PORTMAN
Federal Public Defender
2 RONALD C. TYLER
Assistant Federal Public Defender
3 450 Golden Gate Avenue
San Francisco, CA 94102
4 Telephone: (415) 436-7700
5 Counsel for Defendant CASTELLANOS
6
7

8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,
11 Plaintiff,

12 vs.

13 FRANCISCO CERVANTES CASTELLANOS,
14 Defendant.
15
16

)
) No. CR 07-0784 MAG
)
)

) DEFENDANT'S SUBMISSION
) REGARDING BASIS FOR
) SENTENCING WITHOUT
) PRESENTENCE REPORT
)
)
)
)
)

17 Francisco Cervantes Castellanos will appear before the Court on December 12, 2007 in order to
18 change his plea. He hereby requests that the Court dispense with a presentence report and sentence
19 him on that same date. The United States does not oppose the request.

20 Under Federal Rule of Criminal Procedure 32(c)(1)(A)(ii), the Court may impose a sentence
21 without the use of a presentence report if: "the court finds that the information in the record enables
22 it to exercise its sentencing authority meaningfully under 18 U.S.C. § 3553 and the court explains
23 this finding on the record." Fed. R. Crim. P. 32(c)(1)(A)(ii). Mr. Cervantes Castellanos presents the
24 following facts to aid the Court in the meaningful exercise of its sentencing authority.

25 //

26 //

Deft Cervantes Castellanos' Submission re:
Sentencing

1

2 **Charges and Offense Conduct¹**

3 Mr. Cervantes made his initial appearance in federal court on December 7, 2007. On
4 December 13, 2007, he was arraigned on a one-count information charging possession of an
5 identification document not issued lawfully for his own use, with the intent to defraud the United
6 States, in violation of Title 18 U.S.C. § 1028(a)(4).

7 On November 6, 2007, Mr. Cervantes submitted an application for a United States passport.
8 The application was in the name of Aurelio Ayon Urvina, Jr. A California driver's license and birth
9 certificate in that name were also submitted. The application was referred for criminal investigation.

10 On December 6, 2007, two State Department agents interviewed Mr. Castellano at the U.S.
11 Passport Office in San Francisco. He admitted that his true name, citizenship status and birth date.
12 He also admitted that he had purchased the birth certificate some three years ago, along with a Social
13 Security card. The card was later used to obtain a driver's license, which in turn facilitated
14 application for the passport.

15 **Criminal History**

16 Neither the United States nor defense counsel are aware that Mr. Cervantes has any prior
17 criminal history.

18 **Personal and Family Data²**

19 Francisco Cervantes Castellanos is a twenty-eight year old man born on August 25, 1979 in
20 Jalisco, Mexico. His father, Francisco Cervantes Lopez, is fifty-five and lives in Tijuana, Mexico.
21 His mother, Lupe Castellanos, is fifty-two and lives with his father. Mr. Cervantes is single with no
22 children.

24 ¹Unless otherwise indicated, the offense conduct is based on the Affidavit in Support of
25 Criminal Complaint attached hereto as Exhibit A.

26 ²Counsel avers on information and belief that the following biographical information
regarding Francisco Cervantes Castellanos is true and correct.

1 Education

2 Mr. Cervantes Castellanos completed sixth grade in Mexico..

3 Employment

4 For the past six years, he has worked in the construction trade in San Francisco. Prior to that,
5 he was employed as a farm worker.

6 Health

7 Mr. Cervantes is good health. He has no history of medical problems.

8 Financial Circumstances

9 Francisco Cervantes Castellanos completed a financial affidavit at the outset of this case. The
10 Court found him eligible for appointed counsel. Moreover, he now avers the following, through
11 counsel: He no longer has a source of income, due to his custody and impending deportation. His
12 limited monetary assets, roughly \$3,000, were in a bank account that is now frozen and to which he
13 has no access. His outstanding debts include \$3,500 of consumer credit and \$6,000 for a vehicle
14 loan. He also has typical monthly expenses of approximately \$1,600.

15 **Plea Agreement and Advisory Guidelines Calculation**

16 There is a written plea agreement. Under the agreement, Mr. Cervantes will plead guilty to a
17 violation of Title 18 U.S.C. § 1028(a)(4). Application of the advisory United States Sentencing
18 Guidelines yields the following calculations:

- 19 1) a base offense level of 8 under U.S.S.G. § 2L2.2 (“Fraudulently Acquiring Documents
20 Relating to Naturalization, Citizenship or Legal Resident Status for Own Use”) and
- 21 2) a final offense level of 6, assuming a two-level reduction for acceptance of
22 responsibility under U.S.S.G. § 3E1.1.
- 23 3) a Criminal History Category of One, with a resulting sentencing range of zero to six
24 months in Zone A of the sentencing table.

25 **Requested Punishment**

26 The parties requests that the Court impose a sentence of one year of probation with conditions

1 including not re-entering the country without permission, if Mr. Cervantes is deported. If he returns
2 within the probationary term, he is to report to a probation office within 72 hours.

3 Mr. Cervantes also asks that the Court waive imposition of a fine, as he has demonstrated that
4 he is financially unable to pay a fine.

5 //

6 //

7 //

8 //

9 //

10 //

11 //

12 //

13 //

14 //

15 //

16 //

17 //

18 //

19 //

20 //

21 //

22 //

23 //

24 //

25 //

26 //

Deft Cervantes Castellanos' Submission re:
Sentencing

CONCLUSION

Based on the foregoing, Francisco Cervantes Castellanos requests that the Court sentence him on December 12, 2007, without reference to a Pre-sentence Report. He asks that the Court impose the sentence requested above.

Dated: December 12, 2007

Respectfully submitted,

BARRY J. PORTMAN
Federal Public Defender

/S/

RONALD C. TYLER
Assistant Federal Public Defender